

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MANUEL NIEVES,
PETITIONER,

THOMAS L. CARROLL, WARDEN
AND CARL C. JANBERG, ATTORNEY GENERAL
FOR THE STATE OF DELAWARE
RESPONDENTS

Civ. Act. No. 06-328-GMS

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

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Petitioner's Reply to the State's Answering Brief

Pursuant to Rule 2 of the Governing Section 224 Actions, 28 U.S.C. 11, § 2254, Petitioner states the following in response to the State's answer to his petition for a writ of habeas corpus.

1. Arguably, the crux of the case against the petitioner seemingly rests on the state's court decision under Supreme Court Lippino Rule 32(b).
2. As grounds for this court to deny consideration of the petitioner's writ, the state relies upon Wilmer v. Carroll, 2003 WL 21146730, *3 (D.Del.).
3. However, Wilmer is inopposite of the present case for the purpose of either equitable or statutory tolling, under § 2244(d)(1).
4. Recently in Lawrence v. Florida, No. 02-8828, the United States Supreme Court granted a certiorari to resolve a conflict among the circuits on the question of whether AEDPA's time limitation can be

1. On October 31, 2003, petitioner filed a reduction of sentence pursuant to Rule 35(a). The state argues that it cannot serve as a tolling principle under post-conviction relief.

tolling during the pendency of a petition for certiorari from a judgment denying state post-conviction relief. Implicit and very important in the grant is that the Court may decide whether limitations periods are tollable during the time a prisoner may petition for a certiorari from the denial of his state post-conviction petition even if he has not done so. For this reason alone, this Court must consider the effect that the LAWRENCE decision holds. And in abeyance stay its decision in this case, at this time.

2. The statute of limitations was not intended to prevent a court of review from responding on claims years later or, in the event of a reversal, from retrying a case. SEE 28 U.S.C. § 2253(c)(3).

6. Similar, in a Third Circuit Court of Appeals case currently pending, the Court is considering the question of whether a motion failing to challenge the conviction or sentence can act to toll the limitation period. SEE HARTMAN v. CARROLL, No. 04-4550. Again, this Court must stay its decision in this case pending HARTMAN's outcome.

7. Consideration of constitutional rights may not be thwarted by simply recitation of a rule with which there has been compliance in both substance and form, in every real sense. SEE Davis v. Wechsler, 263 U.S. 12, 24 (1923); Stob v. City of Boxley, 332 U.S. 313, 318-320 (1958).

8. In as much the state agrees. SEE state's answer, p. 8 (top paragraph). LAWRIE v. SNYDER, 9 F. Supp. 2d 428, 454 (D.Del. 1998).

Conclusion

Based upon the above, the petitioner request that as required by the rules of the Court (all trial transcripts including jury instructions and selection). Along with a stay of any decision in light of LAWRENCE and LAWRIE.

Certificate of Service

I, MANUEL NIEVES, hereby certify that I have served a true

And correct cop(ies) of the attached: _____

Reply to the State's Answering Brief upon the following
parties/person (s):

TO: Clerk of the Court
1. Caleb Boggs Building
844 King Street
Locker Box 18
Wilmington, DE 19801

TO: Elizabeth R. McFarlan
Deputy ATTORNEY GENERAL
800 N. French Street
Wilmington, DE 19801

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United
States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 21 day of SEPTEMBER, 2006

Manuel Nieves

IM MANUEL NIENES
SBI# 464723 UNIT F-D-35
DELAWARE CORRECTIONAL CENTER
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22 SEPTEMBER 1967

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